Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	GN Docket No. 25-133
Delete, Delete, Delete	)	

COMMENTS OF SIRIUS XM RADIO LLC

Sirius XM Radio LLC ("Sirius XM") hereby comments on the Public Notice in the above-captioned proceeding.[1] In the *Notice*, the Federal Communications Commission ("Commission") is taking action to promote policies in response to recent Executive Orders intended to eliminate harmful regulations and promote greater efficiency in the federal government.[2] Consistent with those Executive Orders, the Commission now seeks broad input on measures that can be taken to alleviate unnecessary or burdensome aspects of the Commission's rules and to promote investment in innovative and advanced communications networks. Specifically, the Commission requests proposals for rules that could be eliminated based on consideration of a range of policy factors, including (i) cost-benefit considerations, (ii) experience gained from implementation of the rules, (iii) marketplace and technological changes, (iv) whether certain regulations present a barrier to market entry, (v) changes in the broader regulatory context, (vi) changes in the legal framework governing the Commission's rules, and

[1] *Delete, Delete, Delete*, Public Notice, DA 25-219 (rel. Mar. 12, 2025) ("*Notice*").

[2] *See id.* at 1; Exec. Order No. 14192, Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065 (Feb. 6, 2025); *see also* Exec. Order No. 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, 90 Fed. Reg. 10583 (Feb. 25, 2025).

(vii) other considerations that may warrant elimination of certain rules.[3] Sirius XM urges the Commission to use this proceeding to explore the potential for modernizing the regulatory approach to the satellite digital audio radio service ("SDARS") and specifically to Sirius XM.

I. SDARS REGULATION IS RIPE FOR MODERNIZATION

SDARS operations in the United States are subject to a range of overly burdensome restrictions that limit their ability to compete and innovate. At its inception, Sirius XM was an American innovator that developed a cutting-edge technology to change the way people enjoy audio entertainment and vastly expanded the content available to consumers. That innovation received significant pushback from competitors that perceived SDARS as a threat to their marketplace dominance. Consequently, many of the restrictions the Commission initially imposed on SDARS operators, and which hinder SDARS innovation today, were the result of proposals from interests fundamentally opposed to SDARS' development nearly three decades ago.

The origins of the excessive regulation of SDARS can be seen plainly in the Commission's *1997 SDARS Order* and the numerous pages it devoted to examining the economic impact that competition would have on broadcasters and whether that was a reason not to authorize the service.[4] Putting aside whether such an analysis was even appropriate given the clear economic benefits of competition, the *1997 SDARS Order* also could not account for the dramatic and fundamental ways in which the audio industry would change between 1997 and today, with Sirius XM now facing significant competition from online streaming and on-demand

[3] *Notice* at 2-5.

[4] *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Band*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754 (1997) ("*1997 SDARS Order*").

services (including Amazon Prime, Apple Music, Spotify, TikTok, and YouTube) that did not even exist at that time, in addition to the continuing competition faced from AM and FM broadcast radio. The audio marketplace that the Commission envisioned in the *1997 SDARS Order* – satellite radio competing with terrestrial radio – bears little resemblance to today's marketplace with a wide range of providers offering radio and other audio services.

Similarly, the 2008 order authorizing the merger of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc.[5] demonstrates the impact of opponents' fears of competition from satellite radio, with such opposition resulting in a lengthy merger review that severely harmed the companies. The *2008 Sirius XM Merger Order* resulted in significant and burdensome "voluntary" conditions on Sirius XM's operations to satisfy opponents' concerns and the Commission's agenda at that time — conditions that yield limited if any public interest benefits today but were imposed with no sunset date and continue to burden Sirius XM's operations.

Simply put: the overregulation of SDARS was unnecessary when the Commission first adopted these requirements, and over time has become increasingly burdensome, ineffective, and inefficient given the substantial changes in the competitive ecosystem in the audio industry. It is time for the Commission to eliminate these outdated regulations that shackle SDARS innovation in general and Sirius XM in particular.

II. THE COMMISSION SHOULD CONSIDER DELETING RULES THAT HINDER SDARS OPERATION AND INNOVATION

Consistent with the policy considerations outlined in the *Notice,* Sirius XM has identified a number of Commission rules and requirements that should be eliminated or modified to

[5] *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348 (2008) ("*2008 Sirius XM Merger Order*").

promote the deployment of innovative and competitive SDARS operations. Specifically, the Commission should eliminate (i) the prohibition on local programing through SDARS repeaters, (ii) the rule requiring the deployment of interoperable radios, (iii) the rule limiting SDARS licenses to 8-year terms, and (iv) burdensome requirements associated with special temporary authority ("STA") extensions.

Prohibition on Local Programming (47 C.F.R. §25.144(e)(4)-(5)). The Commission's rules require that SDARS terrestrial repeaters retransmit only the same programming that is transmitted by the satellites of an SDARS licensee, prohibiting SDARS operators from using terrestrial repeaters to retransmit different transmissions to different regions within the satellite coverage area. The consequence of these rules is that SDARS operators have no ability to provide localized programming and advertising that appeal more directly to consumers in those markets. Not only does this rule unnecessarily limit Sirius XM's ability to pursue a significant number of programming and advertising opportunities, it also harms consumers who stand to benefit from local programming. Moreover, the broadcasters and online streaming services with which Sirius XM competes labor under no such localism limitation, further hindering the marketplace. Promoting localism is a fundamental and long-standing tenet of the Commission's approach to broadcast regulation[6] and Sirius XM urges the Commission to consider the substantial benefits to consumers that could come from enabling the use of SDARS repeaters for local programming.

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[6] *See*, *e.g., Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, ¶ 1 (2004) (emphasizing that the Commission has consistently required broadcasters to "air programming that is responsive to the interests and needs of their communities of license" and that such licensees "must serve their local communities"); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, ¶ 4 (2012) (noting that a broadcaster's "fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.").

Interoperable Radios (47 C.F.R. § 25.144(a)(3)(ii)). The Commission's rules require that all SDARS operators provide radios capable of receiving all licensees' SDARS transmissions. The Commission adopted this rule to permit consumers to access the services from all licensed SDARS systems and stated that this receiver interoperability requirement was intended as a more flexible alternative to mandating a specific receiver standard for SDARS.[7] While Sirius XM continues to satisfy this requirement, consumers have shown little interest in interoperable radios. Eliminating this requirement would free up resources and enable Sirius XM to focus on providing packages and products that consumers actually care about.[8]

SDARS Satellite License Terms (47 C.F.R. § 25.121(a)(2)). The Commission licenses SDARS and broadcast satellites for terms of eight years.[9] While the Commission initially adopted this license term based on language in the Communications Act's limiting broadcast license terms to 8 years, over the years the Commission has generally recognized that the public interest is not served by applying this limitation to other satellite licenses, which have been extended to 15 years. Not only are most geostationary orbit ("GSO") satellites, including Sirius XM's SDARS satellites, built with the capability to operate well beyond an 8-year license term, eliminating the 8-year license term would also be consistent with similar deregulatory efforts the Commission has taken in the context of the direct broadcast satellite ("DBS") service, where the Commission found the public interest would be served by extending the term of certain DBS

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[7] *1997 SDARS Order* ¶ 106. The *2008 Sirius XM Merger Order* expressly continued this requirement, despite the reduced logic for any such rule after the two formerly-independent companies would be merged into one. *See 2008 Sirius XM Merger Order* ¶¶ 124-125.

[8] To the extent that the Commission deletes this outdated requirement, Sirius XM also requests that the Commission eliminate the voluntary commitment on the merger order that Sirius XM offer interoperable radios. *See 2008 Sirius XM Merger Order* ¶ 124.

[9] 47 C.F.R. § 25.121(a)(2).

satellites to 15 years to match the license term of other GSO licenses.[10] Aligning the license terms for all GSO satellite licensees would promote administrative convenience for both satellite operators and the Commission by reducing the number and frequency of applications that an operator would need to file over the operational life of a space station. Eliminating this rule would also reduce uncertainty and promote investment for operators who have launched and operate satellites with a 15-year or greater design life but are not guaranteed to have their authorization renewed after only 8 years of operation.

Special Temporary Authority (47 C.F.R. § 25.120). The Commission grants STA for satellite operators to temporarily operate at variance from their licenses, for periods of 30, 60, or 180 days. Sirius XM often uses STAs to relocate satellites, conduct testing, and for other short-term purposes. While these filing terms offer some flexibility to satellite operators like Sirius XM, it is not uncommon for operators to require extension of an STA's term (for example, because the Commission has not yet acted on an underlying application for permanent authority). Under current rules, requesting extension of an STA's term requires filing an application substantially identical to the initial STA request even where the operations covered by the extension are identical to what the Commission has already authorized under a previous grant of STA. This increases paperwork for operators and review time for FCC staff. To alleviate this burden, the Commission should modify and streamline its STA rules consistent with recent advocacy in the Commission's satellite streamlining proceeding in which parties have asked the

[10] *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, Report and Order, 34 FCC Rcd 9014, ¶¶ 15-16 (2019).

Commission to reduce the burdens of the STA rules that often require the filing of multiple STA extensions and the payment of application fees for STAs that are routinely granted.[11]

III. THE COMMISSION SHOULD ELIMINATE OUTDATED MERGER REQUIREMENTS

While the *Notice* focuses principally on identifying Commission rules that could be modified or eliminated, the Commission should also use this proceeding to address other areas where requirements serving the same function as rules have been adopted through prior Commission decisions and similarly hinder competition and innovation in satellite radio. One area that warrants such consideration is merger conditions, and particularly the perpetual conditions imposed as part of the *2008 Sirius XM Merger Order*.

The Commission's order approving the Sirius XM merger was conditioned on compliance with a number of conditions and voluntary commitments to help mitigate perceived public interest harms that might result from the merger. While some of these conditions and voluntary commitments may have been appropriate in 2008, none remain relevant today. Sirius XM urges elimination of three burdensome conditions in particular, namely the conditions requiring: (i) channel set-asides, (ii) a la carte radios, and (iii) certain programming packages.

Channel Set-Asides. As part of the *2008 Sirius XM Merger Order*, the Commission conditioned grant on implementing certain programming set-asides: (a) 4% of the full-time audio channels on each platform for Qualified Entities ("QE") and (b) 4% for noncommercial

[11] *See* Letter from Tom Stroup, President, Satellite Industry Association, to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 22-411 & 22-271 (Mar. 5, 2025) (urging reform of existing Part 25 STA procedures). Notably the Commission has already recognized the need for improvement in satellite STA procedures and has already taken some steps to alleviate the burdensome process of seeking STA extensions. *See Space Bureau Announces Temporary Expedited Processing Procedures for Earth Station Applications Seeking Special Temporary Authority*, Public Notice, DA 25-207 (SB Mar. 10, 2025).

educational or informational programming ("PI").[12] The Commission has stated that QE stations should be selected to, among other things, "promote source, viewpoint, and programming diversity" and "offer a diverse viewpoint or diverse entertainment content[.]"[13] Similarly, the PI set-aside (itself based on the rule applicable to DBS providers specifying their obligation to provide PI channels) was described by the Commission as helping to "maintain a platform for diverse voices post-merger[.]"[14] Today Sirius XM carries 17 QE and PI stations, on some or all of its satellite platforms, in compliance with this merger condition. Pursuant to Commission requirements, Sirius XM has no editorial control over these stations and must carry these stations in all packages and levels of service, including on its streaming service.

The set aside condition is simply no longer relevant. While Sirius XM may choose to continue carrying some of the stations it currently carries under these set-asides, there is no need for a mandate that it do so.[15] Changes in the media marketplace, including the rise of competing internet streaming services, ensure that consumers have abundant opportunities to enjoy content of their choosing through multiple media options. Moreover, none of Sirius XM's audio competitors are subject to similar obligations. In addition, Sirius XM's satellite-delivered channel capacity is extraordinarily limited and the bandwidth it devotes to QE and PI stations limits the programming options that Sirius XM can provide to its subscribers. Eliminating this condition would allow Sirius XM to free up additional spectrum resources to support other

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[12] *2008 Sirius XM Merger Order* ¶¶ 131-135, 136-146.

[13] *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order, 25 FCC Rcd 14779, ¶ 18 (2010).

[14] *2008 Sirius XM Merger Order* ¶ 136.

[15] Sirius XM has not determined which of its set-aside stations it would discontinue carrying if the Commission deletes this requirement from the *2008 Sirius XM Merger Order*. At minimum, Sirius XM expects it would continue carrying these stations on its streaming service, which does not create the same burdens on Sirius XM's limited spectrum resources.

programming and ancillary services driven by the marketplace and consumer choice not government mandate.

A la Carte Radios. As a voluntary commitment in the *2008 Sirius XM Merger Order* Sirius XM offered to provide a satellite radio that can receive an a la carte service.[16] Under an a la carte plan, a subscriber is allowed to select specific channels to include in its plan with the ability to add additional channels for an additional fee. Sirius XM offered this as part of its voluntary commitments, in two packages, largely in response to the then Chairman's interest in a la carte programming.[17] While Sirius XM continues to offer such radios, few subscribers are interested. Moreover, there are aftermarket radios that can provide this same functionality making the requirement obsolete. Ending this requirement would also allow Sirius XM to shift resources from such products driven by consumer demand rather than a regulatory obligation.

Program Packages. As a voluntary commitment in the *2008 Sirius XM Merger Order* Sirius XM agreed to offer different packages of programming.[18] While Sirius XM still offers these packages, consumers have not shown significant interest in these offerings. Sirius XM's business has evolved in the past 18 years and has moved toward offering satellite radio service in new packages and configurations that are more responsive to consumers' needs. Eliminating this requirement would allow Sirius XM to focus resources on products and services that the marketplace supports.

While eliminating each of these merger requirements would provide substantial benefits to Sirius XM and its customers, Sirius XM urges the Commission to consider whether the public

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[16] *2008 Sirius XM Merger Order* ¶¶ 88, 112.

[17] *See*, *e.g.*, J. McCain & K. Martin, *Make Cable Go A La Carte*, LA Times (May 25, 2006), https://docs.fcc.gov/public/attachments/DOC-266254A1.pdf.

[18] *2008 Sirius XM Merger Order* ¶¶ 83, 112.

interest is served by maintaining *any* of the perpetual conditions or voluntary commitments from the *2008 Sirius XM Merger Order*. The Commission does not typically adopt merger conditions that continue in perpetuity and there are numerous examples where the Commission has modified or eliminated merger conditions after concluding that such conditions no longer served the public interest.[19] Moreover, no other media company with which Sirius XM competes is subject to similar requirements. Given the evolution of SDARS operations and the broader competitive landscape since the Sirius-XM merger, these conditions are no longer relevant and negatively impact Sirius XM's ability to evolve and grow its business in response to changed consumer demands.

IV. CONCLUSION

This proceeding provides an exciting opportunity for the Commission to remove regulatory roadblocks to the provision of innovative services. By eliminating or modifying the regulatory burdens discussed herein, the Commission can help to improve the competitiveness of SDARS operators and their ability to provide innovative services while also reducing the administrative burdens on the Commission and its applicants. Sirius XM looks forward to further engagement with the Commission on these and other critical issues to ensure that SDARS is able to thrive.

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[19] *See*, *e.g.*, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 27 FCC Rcd 638, ¶ 1 (2012) (terminating several merger conditions based on changed circumstances and "in furtherance of [the Commission's] broader efforts to remove unnecessary regulations."); *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership; For Consent to Assign or Transfer Control of Licenses and Authorizations*, 32 FCC Rcd 3238, ¶¶ 10-12 (2017) (eliminating certain merger conditions on finding that such conditions failed to serve the public interest).

Respectfully submitted,

By: /s/

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